Before the
Federal Communications Commission
Washington, D.C. 20554

FCC 07M-22

In the Matter of	)	PS Docket No. 07-69
	)	
CITY OF BOSTON	)	Mediation NO. TAM-11155
	)	
SPRINT NEXTEL CORPORATION	)	06428
	)	
Relating to Rebanding Issues in the	)	JUL 1 1 2007
800 MHz Band	)	

MEMORANDUM OPINION AND ORDER

Issued: July 3, 2007   :   Released: July 5, 2007

Motion to Delete/Combine Issues was filed by City of Boston ("Boston") on May 4, 2007. Oppostion of Sprint Nextel Corporation ("Sprint") was filed on May 18, 2007. Reply to Opposition was filed by Boston on May 30, 2007.

Issue for Deletion

The third issue set in *Hearing Designation Order*, PS Docket No. 07-69, DA 07-1631 (PHSB April 5, 2007) (("HDO") reads as follows:

> c. To determine in the matter of the BTT [Boston Trucking and Transportation] case, the appropriate language to govern the change order process in the FRA [Frequency Relocation Agreement] entered into between the City of Boston and Sprint Nextel.

Both Boston and Sprint agree that the processing of notification of changes in configurations are appropriately stated in the FRA. Chief, Enforcement Bureau ("Bureau"), a party to this case, concurs with Boston and Sprint that this issue should not be prosecuted due to mootness. *See Prehearing Conference*, May 31, 2007, Tr. 5-6. Therefore, the third issue shall be deleted from further consideration in this proceeding.

Request Combined Issues

The first and second issues set in the HDO are the following:

> a. To determine, in the matter of the BPD [Boston Police Department] case, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology LLC, and, if so, the amount of such payment, and

b. To determine. in the matter of the BTT [Boston Trucking and Transportation] case, whether Sprint Nextel is obligated to pay the City of Boston for inventory-tracking and management software from MCM Technology LLC, and, if so, the amount of such payment.

There were negotiations between the parties in connection with rebanding of 800 MHz facilities operated by the Boston Police Department ("BPD"), and separate negotiations between the parties related to facilities owned by Boston's Trucking and Transportation ("BTT") facilities. Boston contends that because a single-purchase or quote of an MCM software subscription will serve both BPD and BTT, there need not exist two issues related to the software, but only one. According to Boston, a single software license subscription would meet the needs of both Boston departments and under the two issues the two quotes cited in the FSAs, if added together, would inflate software costs. [1] The MCM software subscription expects rebanding up to 3000 mobile and portable units for the City of Boston, both BDP and BTT combined.

Sprint objects and argues that by accepting Boston's methodology of proof, Boston's burden of proof would be limited to one software package for two usages which would enhance Boston's chances of meeting its burden of proof for recovering costs of software to be used by distinct departments.

Analysis

The Bureau found that the mediator had issued separate recommendations for BPD and BTT, and recommended different results for each of the two usages. *Memorandum Opinion and Order* (DA 06-2550), released December 20, 2006. There are two FRAs to consider under the Bureau's two issues. Ultimately, it must be shown by Boston with a preponderance of reliable evidence that each FRA is "reasonable, prudent," and the "minimum necessary to provide facilities comparable to those presently in use." The policy allowing rebanding costs provides that Sprint is "not [to be held] responsible for paying for features or services that are not essential to the paid reconfiguration process."

Under those standards, evidence relevant to the issues is yet to be introduced. Therefore, Boston's motion would not be dispositive and is premature at best. An immediate concern to the Presiding Judge is whether a compressed issue would facilitate the receipt of evidence at hearing, and the writing of a decision that would treat the two issues as one. It does not appear that the conduct of this hearing would be facilitated by constricting issues since proof of MGM's software must be considered in light of the BPD and BTT service that is needed to be rebanded. If there is probable overlap of software usage, the hearing record must be reliably accurate which is more likely achieved by receiving evidence in the specific context of BPD and in the specific context of BTT. It is significant that a mediator ruled separately on BPD and BTT, and reached differing results. While not binding on the Presiding Judge in this *de novo* proceeding, these mediation results lend support for considering BPD and BTT separately,

---

[1] Boston represents that the cost to be charged by MCM for subscribing to its software program applicable to both BPD and BTT is $65,564.

particularly at the outset of the proceeding. Boston will have ample opportunity in its proposed findings to show how specific evidence may support a unified finding and/or conclusion. Therefore. Boston is not prejudiced by the issues as they are set in the *HDO*.

Finally. there is a Commission policy against altering issues after issuance of an HDO. *See Fort Collins Telecaster*. 103 FCC 2d 978, 983 (1986) (where there has been "thorough consideration" of the issues in an HDO. the Presiding Judge may not reconsider or take inconsistent action). See also. *Atlantic Broadcasting Co.*, 5 FCC 2d 717. 720 (1966); *Frank H. Yemen*. 30 Radio Reg. 2d 1657 (1977). This policy against changing issues is to be applied here where it appears that the designation authority considered the issues based on a preliminarily developed mediation record. See *Boston Order*. 21 FCC Rcd 14661 (PSHSB 2006).

Ruling

Based on the foregoing, IT IS ORDERED that Motion to Delete/Combine Issues filed by City of Boston IS GRANTED in part and IS DENIED in part.

FEDERAL COMMUNICATIONS COMMISSION [2]

Richard L. Sippel
Chief Administrative Law Judge

---

[2] Courtesy copies of this *ORDER* were sent to all counsel by e-mail on date of issuance.